

## REMARKS

The Non-Final Office Action mailed September 17, 2008 considered claims 1-38. Claims 1-38 were rejected under 35 U.S.C. § 101 because the claimed invention was directed to non-statutory subject matter, specifically a computer software product. Claims 1-6, 9-14, 15-18, 20-31, 33-38 were rejected under 35 U.S.C. § 102(b) as being anticipated by Pugaczewski et al., U.S. Patent No. 6,903,755 (filed Dec. 21, 1999) (hereinafter Pugaczewski). Claims 7-8, 19 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pugaczewski, in view of Richardson, U.S. Patent No. 7,146,568 (filed Aug. 6, 2001) (hereinafter Richardson).<sup>1</sup>

By this response, no claims are amended and claims 15-38 are cancelled.<sup>2</sup> Claims 1-14 remain pending.<sup>3</sup> Claims 1, 13, and 14 are independent claims which remain at issue.

As reflected in the claims, the present invention is directed generally toward embodiments for generating distributed application and distributed system topologies with management information in a networked environment. Independent claim 1 recites, for instance, in combination with all the elements of the claim, a method (process) performed in a computer system for generating topological and management information on a graphical user interface. The method includes obtaining a request to generate application topological and management information corresponding to two or more sites associated with a network. As per the request, the method obtains site attribute information corresponding to the sites. The site attribute information is processed to obtain site application topological and management information. Finally, the site topological and management information is generated on the graphical user interface.

Independent claims 13 and 14 recite a computer program product (i.e., a medium encoded with instructions) and a computer system embodiment, respectively, of the method recited in claim 1.

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<sup>1</sup> Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

<sup>2</sup> Note that cancellation of claims 15-38 does not evince any concession or agreement by the Applicants as to the rejections or the teachings of the cited art as asserted by the Office. The cancelled claims claim similar, but not identical, subject matter as the pending claims and have been cancelled to expedite and facilitate prosecution. The Applicants reserve the right to present for consideration subject matter similar or identical to the cancelled claims at such a future time as may be considered appropriate or desirable.

<sup>3</sup> The amendments and remarks presented herein are consistent with the information presented by telephone by patent attorney Thomas Bonacci (reg. no. 63,368).

### **Claim Rejections Under 35 U.S.C. § 101:**

Claims 1–38 were rejected under 35 U.S.C. § 101 “because the claimed invention is directed to non-statutory subject matter.”<sup>4</sup> In particular, the Office objected to claims directed toward “a computer software product” which was characterized as “not physical ‘things’” and not “statutory processes as they are not ‘acts’ being performed.”<sup>5</sup> The Applicants respectfully disagree.

The Applicants point out that independent claims within claims 1–14 recite various embodiments of the present invention, including methods (i.e., statutory processes) (*see, e.g., claim 1*), a computer-readable medium (i.e., a physical thing) (*see, e.g., claim 13*), and a computer system (i.e., a physical thing) (*see, e.g., claim 14*).

A method in a computer system, as recited in claim 1 does, indeed, recite acts being performed (e.g., “obtaining a request ...; obtaining site attribute information ...; processing the site attribute information ...; and generating the site topological and management information ...”). A computer-readable medium, as recited in claim 13, recites a physical thing – an article of manufacture – which is the medium, itself.<sup>6</sup> A computer system comprising a processor, as recited in claim 14, also recites a physical thing – an article of manufacture.

As such, the Applicants submit that each of the pending independent claims does, indeed, recite statutory subject matter under 35 U.S.C. § 101 which specifically provides that a “useful process, machine, manufacture, or composition of matter” is patentable subject matter. As each of the independent claims recite statutory subject matter, the Applicants respectfully request the rejections under 35 U.S.C. § 101 be withdrawn.

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<sup>4</sup> Office Comm. p. 2.

<sup>5</sup> Office Comm. p. 2.

<sup>6</sup> Notably, the Office, itself, quoted the relevant section of the MPEP which clearly states that a computer-readable medium is properly to be considered statutory. “[A] claimed *computer-readable medium encoded with a computer program* defines structural and functional interrelationships between the computer program and the medium which permit the computer program’s functionality to be realized, and *is thus statutory*.” Office Comm. p. 2 (emphasis added); *see also* MPEP § 2106.

### Claim Rejections Under 35 U.S.C. § 102:

Each of the independent claims were rejected under 36 U.S.C. § 102(b) as being anticipated by Pugaczewski.<sup>7</sup> The Applicants respectfully disagree.<sup>8</sup>

As to claim 1, in particular, the Office asserted that "[t]he configuration manager operates to establish a connection across each subnet on the route by sending requests to element managers to program the subnet elements"<sup>9</sup> teaches "obtaining a request to generate application topological and management information corresponding to two or more sites associated with a network."<sup>10</sup> The Applicants submit that there is no teaching, explicit or implicit, of obtaining a request to generate *topological* information. Establishing a connection across a subnet and sending requests to managers to program subnet elements fails to even mention topological information and fails to teach obtaining a request to generate such information.

The Office asserted that "configuration manager 248 requests the corresponding element management layer configuration manager 252 to program the subnet element 256 (at each subnet, with the appropriate element manager) in accordance with the routing information obtained from the information manager"<sup>11</sup> teaches "obtaining site attribute information corresponding to the two or more sites."<sup>12</sup> The Applicants submit that requesting a configuration manager to program a subnet element in accordance with routing information from an information manager fails to explicitly or implicitly disclose *obtaining site attribute information* from two or more sites.

The Office asserted that "the medium ... comprises instructions for operating a non-graphical back-ground process for handling communication with the network management system such as ... a UNIX daemon"<sup>13</sup> teaches "processing the site attribute information to obtain

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<sup>7</sup> Office Comm. p. 3.

<sup>8</sup> Note that the Applicants previously traversed rejections under 35 U.S.C. § 102 in view of Pugaczewski in a response filed Mar. 10, 2008. The Applicants note that the arguments and discussion of that response, with one minor exception as to one element of claim 1 (*see* Office Comm. p. 13), have not been addressed or responded to. The Applicants respectfully reiterate and reassert the arguments and traversals as discussed in the Mar. 10, 2008, response.

<sup>9</sup> Pugaczewski, Abstract.

<sup>10</sup> Office Comm. p. 3.

<sup>11</sup> Pugaczewski col. 16, l. 4–8 (note that the Office cited Pug col. 15, l. 61–67, but the quoted material is from the indicated part of col. 16.)

<sup>12</sup> Office Comm. p. 3.

<sup>13</sup> Pugaczewski col. 3, l. 52–56.

site application topological and management information.”<sup>14</sup> The Applicants note that there is no explicit or implicit teaching of *processing site information* or of *processing to obtain site application topological information*. The Applicants submit that “instructions for operating a ... process for handling communication” fails to teach the requisite processing of attribute information to obtain topological information.

The Office asserted that “instructions for establishing a connection between the graphical user interface and the network management system”<sup>15</sup> teaches “generating the site topological and management information on the graphical user interface.”<sup>16</sup> The Applicants submit that establishing a connection between a graphical interface and a network management system fails to teach *generating topological and management information*. Further, establishing a connection between a graphical interface and a network management system fails to teach that the topological and management information is *generated on the graphical user interface*. Establishing a connection merely teaches that a link (i.e., a connection), is created (i.e., established) between the user interface and the management system. It teaches nothing about generating information (of any kind) on a graphical user interface.

For at least the distinctions noted above, the Applicants submit that Pugaczewski fails to teach each and every element of claim 1 as recited and therefore a rejection under 35 U.S.C. § 102 would be improper and should be withdrawn. Accordingly, the Applicants respectfully request the rejection be withdrawn and claim 1 be favorably reconsidered.

As each of independent claims 13 and 14 (as well as dependent claims 2–12) incorporate all the elements of claim 1, the above discussion applies also to those. Accordingly, the Applicants respectfully request the rejections of claims 2–14 35 U.S.C. § 102 in view of Pugaczewski be withdrawn and the claims be favorably reconsidered.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending

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<sup>14</sup> Office Comm. pp. 3–4.

<sup>15</sup> Pugaczewski col. 3, l. 43–45.

<sup>16</sup> Office Comm. p. 4.

application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 17<sup>th</sup> day of December, 2008.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick D. Nydegger". The signature is fluid and cursive, with a large, stylized "R" and "N".

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